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Amendments to regulation relating to food labelling and advertising

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Report Highlights:

On May 29, 2014, the South African Minister of Health issued a Government Notice (R429) inviting comments on the proposed amendments to the regulations relating to the labelling and advertising of foods. The official deadline for the submission of comments or representations on the proposed regulations to the Director General of Health is August, 29, 2014. According to media reports and post contacts, responses to the proposed regulation have been mixed. Post encourages United States food businesses to review this proposed regulation and submit comments/representations to the Department of Health as it is anticipated that the regulation could result in an unfair and an uneven playing field, and could impact United States exports and food businesses.

Background

On May 29, 2014, the South African Minister of Health issued a Government Notice (R429) inviting comments on the proposed amendments to the Foodstuffs, Cosmetics and Disinfectants Act (54/1972): Regulations relating to the Labelling and advertising of foods. The official deadline for the submission of comments or representations on the proposed regulations to the Director General of Health is August 29, 2014.

The proposed amendments to the regulations relating to the labelling and advertising of foods can be found on the following link; <http://www.health.gov.za/docs/legislation/R429of29May2014-draft-FL-Regs.pdf>. The ministry also published the draft guidelines applicable to the draft regulations (R429 of 29 May 2014), for compliance purposes, and can found on the following link; <http://www.health.gov.za/docs/legislation/FoodlabellingGuidelines.pdf>.

The South African government has indicated that the amendment to the regulation follows a 2010 World Health Assembly resolution and was passed to address the increasing impact of non-communicable lifestyle diseases (NCDs) in South Africa. The amendments were expected by the industry following the criticism against the existing legislation (R146) which was passed by government in 2011.

Proposed amendments

The Department of Health has indicated that the new regulation promotes the social and economic welfare of consumers in South Africa and ensures that companies and marketers convey information on food labels and advertising in a standard manner and with accurate, factual information to help South African consumers make more informed and healthier choices in their brand purchases.

Key changes and additions to the regulation are summarized below:

1. Health claims may no longer be promoted through brand names.
2. The regulation provides a list of health and nutrient claims that could be used in food labels and advertising.
3. The regulation provides a list of prohibited statements and misleading descriptions that will no longer be allowed in labels and advertising.
4. Nutrition information will become mandatory for all food products sold in South Africa, except for a small number of exemptions.
5. The regulation introduced a blanket ban on advertising of “unhealthy food” targeting kids by restaurants, food companies including such advertisements through corporate sponsorship of sports clubs, health campaigns and schools.
6. The regulation introduced a ban of the use of cartoon characters, celebrities and sports stars in advertising.
7. The regulation has added a vastly expanded set of definitions.
8. There are improvements and clarification in areas like prescribed letter sizes.
9. Specifications of food products must be kept in a specified format and be accessible to the authorities within two working days.
10. Where a product displays a religious symbol, the same product will also need to be displayed on the shelf with no religious symbols.

If the proposed regulation is passed, some clauses could be implemented at different periods, ranging from immediately to 36 months post approval. Media reports and post contacts responses to the proposed amendments have been mixed and are discussed in the following section.

Support for the new regulation

Support for the new regulation has mainly been received from children's organizations, consumer protection bodies and dieticians on the basis of their support of the potential positive impact the regulation could have on consumer health. An industry source that is a significant player in the children's entertainment market, praised the government on taking this step to protect children from unhealthy food, and considered this a bold move, and encouraged food companies to do the right thing by promoting this regulation and healthy eating habits.

Press comments by the Consumer Fair Chairman, indicated that the proposed regulation was in line with what most governments were doing, and it will promote good health among young people, and could result in advertising which focuses on promoting healthy foods.

The Association for Dietetics in South Africa, supported the government's goal to reduce disease risk, but added that more information is required to determine whether banning advertising of less healthy foods to children will have a positive impact on children's eating behaviors. The Association for Dietetics in South Africa also called for more education about making healthy food choices and how different foods can form part of a balanced diet, as well as addressing barriers to healthy choices. Press comments by the SA National Consumer Union (SANCU) Vice-Chairman also expressed that consumers were concerned that a significant contribution to child obesity rested in the advertising of junk food.

Concerns raised on the new regulation

Post participated in a roundtable discussion on amendments to the regulation which was organized by the American Chamber of Commerce and attended by representatives from PEPSI, Disney World and Intertek. The general consensus was that while most industry players were in support of government's intention to address NCDs and the efforts to promote healthy food, the regulation lacked clarity on a lot of sections, and this could result in negative unintended consequences and would not fulfill the objectives of the regulation.

Media reports and post contacts raised concerns on whether government has the capacity to implement this regulation equitably. The complexity and lack of capacity by government to implement the many food regulations was raised by Dr Ntsuabele (Director of Food Safety and Quality Assurance at the Department of Agriculture, Forestry and Fisheries) during a parliamentary session in February 2014, before the proposed regulation was passed. The consequence of government's lack of capacity could result in only the larger and mainly international food companies complying with the regulation, while the small to medium, and informal food business players will not comply. As a result, this regulation would result in an unfair and an uneven playing field. In addition, the consequences of small and medium food business operating under the radar and not complying with the regulation could result in worse consequences for consumers.

Post contacts have raised concern on the scientific validity of some claims made by the regulation, and have also called for the South African government to undertake a scientific study relevant to South Africa before implementing this regulation, especially when the regulation deviates from internationally accepted standards such as CODEX e.g. the regulation guidelines state that beverages containing 2.5 g

of sugar per 100 ml is unhealthy, while the WHO estimates the level at 10 g. It is also anticipated that food businesses would have to change their labelling and packaging requirements to meet the proposed requirements. A regulatory impact assessment is also necessary to measure the economic costs/benefits and possible unintended consequences of the proposed regulations.

The effect of the amendments could require some brand owners to review their existing trademarks, branding and labels, in order to comply with the new regulations, otherwise they risk being unregistrable, or may be cancelled on the basis that it is an entry wrongly made or remaining on the Trade Marks Register. Brand owners will also need to reassess using trademarks that contain certain adjectives, superlatives, laudatory and descriptive words, unless such words are permitted in terms of the regulations. The DOH has indicated that, in the case where health claims or nutrient content claims form part of a brand name or trade name, the use of that brand name or trade name on the packaging of the foodstuff must be phased out by May, 1, 2015, after which the brand or trade name may no longer be used on the packaging of the foodstuff, provided that the brand or trade name was registered before May, 1, 1995. If the brand or trade name was registered after May, 1, 1995, the use of the brand or trade name must be phased out by the day that the amended Regulations come into force. Trademarks that could be affected by this include inter alia, Diet Coke, Coke Zero, McDonalds Happy Meals.

The banning of advertisement at places where children may gather, such as shopping centres and playgrounds; and the restrictions on the advertising of certain foods from 6 am to 9 pm, which is the prime advertising period; and the restrictions of using pictures or figures on adverts, could have implications on other sectors such as the advertising, sports and entertainment industry. Food businesses are likely to cancel endorsement deals and stop sponsoring schools, sports or children events. This will definitely result in loss of income and some employees being laid-off. The Consumer Goods Council of South Africa Food, anticipate that the proposed amendments have the potential to impact negatively on the sale of certain foodstuffs.

The amended regulation guideline allows fruit juices to be marketed and advertised as before even though they have similar or higher levels of sugar than conventional soda-type beverages. This has the effect of targeting conventional soda-type beverages rather than actually encouraging the reduction of sugar intake. Concern has also been raised on the proposed blanket ban on claims for any products containing added fructose, non-nutritive sweeteners and caffeine. This has been viewed as illogical because these products are specifically being used to replace the much denigrated sugars.

The regulation provides a list of health and nutrition claims that can be used in labelling or adverts, but has no provision for the potential approval or assessment of any new health and nutrition claims in the event that valid and scientific claims are discovered in future. This could result in a lack of clarity and uncertainty on how new health and nutrition claims would be handled, and if the regulation will be amended every time there is a new valid claim.

According to industry sources many large food businesses intend to submit comments regarding the impact of the proposed regulations. The main American food businesses that will be affected by the proposed regulation include, PEPSI, Coca-Cola, McDonalds, and KFC. Post encourages more food business to review this proposed regulation and submit comments/representations to the Department of Health as it is anticipated that United States exports to South Africa of prepared foods, tree nuts, dairy products, and vegetable oils will be affected by the proposed regulation.

The United States has requested an extension of the public comments period. Post will continue to monitor this proposed amendment and provide updates accordingly.

Other Related Reports

GAIN Report	Title
Internet Link	Food and Agricultural Import Regulations and Standards – South Africa